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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/591,803

09/06/2006

David Arlinsky

82591

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NATH & ASSOCIATES
112 South West Street
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| EXAMINER |
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COHEN, AMY R

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| ART UNIT | PAPER NUMBER |
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2859

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08/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
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| Office Action Summary | Application No. 10/591,803 | Applicant(s) ARLINSKY, DAVID | |
| | Examiner Amy R. Cohen | Art Unit 2859 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/01/06/09/06/06</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Smallidge (U. S. Patent No. 5,031,329).

Smallidge teaches a digital spirit level (12) comprising a housing (14) with a leveling surface (16) for placing on a surface, an inclination measurement module (44, 46) for measuring an inclination measurement of a surface, and a display driver (120, 122) for displaying inclination measurements of vertical surfaces (Col 10, lines 52-68) upright relative to the 0° horizontal for facing a user holding the digital spirit level against a vertical surface for facilitating straight on reading of its inclination measurement (Figs. 1 and 6, Col 6, lines 5-8, Col 6, lines 54-62, Col 7, lines 1-18, Col 10, lines 52-68).

Smallidge teaches the level wherein said display driver displays inclination measurements of vertical surfaces relative to 0° vertical instead of 0° horizontal for upright display relative to 0° horizontal (Figs. 1 and 6, Col 6, lines 5-8, Col 6, lines 54-62, Col 7, lines 1-18, Col 10, lines 52-68).

Smallidge teaches the level wherein said display driver drives a graphic display screen for displaying inclination measurements upright relative to 0° horizontal irrespective of the

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attitude of said leveling surface thereto (Figs. 1 and 6, Col 6, lines 5-8, Col 6, lines 54-62, Col 7, lines 1-18, Col 10, lines 52-68).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 6, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smallidge.

Smallidge discloses the level as described above in paragraph 2 and wherein said display driver drives a display screen including a pair of orthogonal segment arrays (20, 22) for displaying inclination measurements of surfaces where a first segment array (22) of said pair of orthogonal segment arrays displays inclination measurements of surfaces perpendicular to said leveling surface (Figs. 1 and 6) and a second segment array (20) of said pair of orthogonal segment arrays displays inclination measurements of surfaces parallel to said leveling surface (Figs. 1 and 6), and comprising an attitude detection module for detecting the attitude of the digital spirit level relative to 0° horizontal for providing an input signal for determining whether to display an inclination measurement of a surface whose inclination is close to a changeover inclination on either of a first or second segment array (Col 7, lines 1-18, Col 10, lines 7-68).

Smallidge does not disclose the level wherein said pair of orthogonal segment arrays includes a pair of orthogonal seven segment arrays.

Regarding the number of segments: Smallidge discloses a digital spirit level comprising a pair of orthogonal segment arrays. However, to choose a seven segment array, absent any criticality, is only considered to be the "optimum" value of the number of segments in the array, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a seven segment array in order to provide an indication of level or out of level in a compact design. See also MPEP 2106 and 2144.05.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose level devices Yashiro et al. (U. S. Patent No. 6,381,860), Heger et al. (U. S. Patent No. 5,313,713), Fleming et al. (U. S. Patent No. 4,506,450), North et al. (U. S. Patent No. 4,467,527), Uhoczak (U. S. Patent No. 4,079,521).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARC
August 14, 2007



Diego Gutierrez
Supervisory Patent Examiner
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